IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 29405 of 2005(A)

OS.600/2003 of ADDL.M.C.,KOZHIKODE-I
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PETITIONER:

PANDARACHALIL RADHAMANI AMMA,
W/O.DAMODARAN NAIR, `DWARAKA', NEDIYANAD AMSOM
DESOM, KOZHIKODE.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENT:

KUNDUGARA ABBAS, S/O.UTHAN HAJI,
KUNDUGARA, PUNNIKOTTOOR AMSOM,
KOZHIKODE TALUK, REPRESENTED BY POWER OF
ATTORNEY HOLDER, T.KASSIM, S/O.AMMAD THARON,
PANNIKOTTOOR AMSOM, KOZHIKODE TALUK.

BY ADV. SRI.A.V.M.SALAHUDIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 29405/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT DATED 28.5.2005.

EXT.P2: TRUE COPY OF THE COUNTER STATEMENT DATED 30.5.2005.

EXT.P3: TRUE COPY OF THE ORDER PASSED BY THE ADDITIONAL MUNSIFF-I, KOZHIKODE DT. 30.5.2005.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.29405 of 2005

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Dated: 13th June, 2007

JUDGMENT

Ext.P3 order passed by the learned Munsiff on an application filed by the respondent-defendant under Section 10 of the Code of Civil Procedure staying the present suit O.S.No.600/03 on the reason that a Second Appeal is pending before this court in respect of another suit in which the matter directly and substantially in issue the same as the matter substantially and directly in the present suit.

2. Heard Mr.R.Bindu Sasthamangalam, learned counsel for the petitioner and Mr.A.V.M.Salahudeen, learned counsel for the respondent.

3. Mr.Bindu submitted that the earlier suit was a suit for mandatory injunction commanding the respondent to vacate from the plaint schedule premise on the premise that the respondent is only a licensee. In that suit the contention raised by the respondent was that he is a tenant who has to be evicted in due process of law. That suit was decreed. Against the decree an appeal was preferred and that appeal also dismissed and the issue is now pending before this court in Second Appeal. But the issue in the present suit is whether the defendant is liable to pay licence fee or arrears of rent. In the

present suit a contention has been raised by the respondent that he is a tenant and no licence fee is payable. The issues in the present suit and the issues in the previous suit cannot be said to be same or similar.

3. Mr.A.V.M.Salahudeen, learned counsel for the respondent would support Ext.P3 and submit that the question as to whether the respondent is liable to pay the licence fee claimed in the suit is an issue which is directly and substantially in issue in the earlier instituted suit. For this reason Ext.P3 order staying the present suit is perfectly justified.

4. Having gauged Ext.P3 by the yardsticks which are applicable to the visitorial jurisdiction of this court under Article 227 of the Constitution, I am unable to say that Ext.P3 is tainted by infirmities to such an extent as to warrant correction under the supervisory jurisdiction. But at the same time it is seen that the respondent does not completely denied his liability to pay a particular amount every month to the petitioner. The disputes seems to be regarding the nature of the liability. The respondent contends that the liability is to pay rent but the claim of the petitioner is that the respondent is liable to pay licence fee. I am informed that pursuant to certain interim

orders passed by this court in the Second Appeal the arrears amount (rent or licence fee) has been deposited by the respondent. The liability of the respondent to pay certain amount every month on account of the user of the building cannot be disputed. I find that in the written statement the respondent has admitted that he is liable to pay at least Rs.750/- (Of course Mr.Bindu submits that it has been admitted by the respondent elsewhere that the liability has been enhanced to Rs.1050). Considering the admissions contained in the written statement even as I confirm Ext.P3, there will be an order that confirmation of Ext.P3 will be subject to the condition that the respondent pays every month to the petitioner commencing from 1.7.2007 at the rate of Rs.750/-. The nature of the liability will be subject to the decision this court takes in the Second Appeal.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**